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Subject: Water Law news News for December 17, 2010



Water Law News for December 17, 2010

BNA, Inc.

Daily Environment

REPORT

HIGHLIGHTS

Congress
**Upton Names Six Subcommittee Chairmen;
Will Focus on Cost of Environmental Rules**

Rep. Fred Upton (R-Mich.), the next chairman of the House Energy and Commerce Committee, announced Dec. 16 his picks to run the panel's six subcommittees....

Drinking Water
Senate Approves Cut in Lead for Pipes, Fixtures

The Senate passed by unanimous consent Dec. 16 the proposed Reduction of Lead in Drinking Water Act (S. 3874), a bill to lower the permissible amount of lead in pipes and fixtures that qualify as "lead free." The bill would cut the limit...

Enforcement
**Cabot Oil & Gas to Pay \$4.1 Million
To Pennsylvania Families With Tainted Wells**

PHILADELPHIA The 19 families in northeastern Pennsylvania's Dimock Township whose water wells are contaminated with methane gas will receive a total of \$4.1 million from Houston-based Cabot Oil & Gas Corp., under terms...

Invasive Species
**Genetic Testing Part of Federal Carp Plan
For 2011; Michigan Appeals Ruling on Locks**

LANSING, Mich. The development and refinement of genetic testing, including the use of environmental DNA as a tool for monitoring and tracking Asian carp in waterways leading to the Great Lakes, are among strategies the Obama administration...

Oil Spills
**National Panel Says Sand Berms Ineffective
In Blocking Oil From Deepwater Horizon Spill**

HOUSTON Louisiana's plan to use sand barriers to capture oil from the Macondo well before it could damage coastal areas was an ineffective spill response measure that trapped only a "miniscule" amount of crude, the staff...



EPA s Revised Chemical Spray Permit Draws Warning From GOP Senators

Key Republican senators are raising concerns that EPA is proposing to expand the scope of its first-time Clean Water Act (CWA) permit for chemical spraying activities on or near waters and are calling for substantial scrutiny of the draft document by the Office of Management & Budget (OMB) to limit its impacts.

New Study Rebuts Air Rule Reliability Fears But Debate Lingers On Water Rule

A key consulting firm s new study rebuts concerns that pending EPA air rules will harm the electric grid s reliability by prompting the shutdown of coal-fired power plants, but the study does not assess the reliability impacts of a planned agency cooling water rule for utilities that critics say poses the biggest adverse risk for reliability.

To Eliminate Earmarks, Coburn Offers To Authorize EPA's Water Funds

Sen. Tom Coburn (R-OK), a staunch opponent of funding earmarks for specific projects, is seeking to eliminate millions of dollars earmarked for EPA water infrastructure projects while reauthorizing the agency's clean water and drinking water state revolving loan fund (SRF) programs that distribute the funds via fixed formula to the projects.



<http://www.greenwire.com>

WATER: Senate passes bill to reduce lead in drinking water (12/17/2010)

Paul Quinlan, E&E reporter

The Senate yesterday unanimously approved a bipartisan bill to reduce lead in drinking water.

The measure (**S. 3874**), sponsored by Sens. Barbara Boxer (D-Calif.) and James Inhofe (R-Okla.), will now move to the House for consideration before the end of the year.

The bill would reduce from 8 percent to 0.25 percent the amount of toxic metal allowed in "lead free" plumbing fixtures that touch water.

The measure represented one of the least controversial parts of a broad water infrastructure bill (**H.R. 5320**) that the House passed in July but that stalled

in the Senate over Republican concerns about costs.

"I am so pleased that the Senate has acted to pass this important piece of bipartisan legislation today that will help protect our children and families from dangerous lead," said Boxer, in a statement that called the bill "a major step forward in the effort to eliminate lead in our drinking water."

Inhofe also praised the bill. "It isn't often that Senator Boxer and I agree on legislation," he said. "Yet in this case, we did. Here is an opportunity to pass a bill that will help further decrease the amount of lead in water without imposing a burden on America's manufacturers."

The legislation is supported by industry, government and environmental organizations.

GULF SPILL: Federal panel gives failing grade to La. berm project (12/16/2010)

Paul Quinlan, E&E reporter

An ambitious effort to fight the Deepwater Horizon oil spill by building massive sand berms off the coast of Louisiana was derided today by the National Oil Spill Commission as an "underwhelmingly effective, overwhelmingly expensive" project.

In a draft report, the commission found that the berms promoted heavily by Gov. Bobby Jindal (R) and later touted by his administration as a "great success" captured no more than 1,000 barrels of 4.9 million barrels of oil that gushed from the ruptured Macondo well last summer.

By comparison, oil burning, skimming and chemical dispersion beat back between 890,000 and 1.85 million barrels, the report says. BP PLC, owner of the ruptured well, funded construction of the berms.

"The \$220 million BP has spent on the berms to date, along with the additional \$140 million BP has committed to the project, represents about one-third of the total amount BP has paid to the federal government and the states for oil response and removal in the Gulf of Mexico," the report says.

State officials had said the berms would benefit future efforts to restore the Louisiana coast and its eroding barrier islands. But several federal agencies questioned the project's environmental impacts, suggesting that dredging sediment for the berms might damage habitat.

In a statement, Jindal called the draft report "partisan revisionist history at taxpayer expense" and said Americans would be better served if the panel would instead examine what "federal bureaucracies that can be eliminated or expedited in times of major disasters."

"The report's assertion that the berms did not pass the commission's 'cost benefit analysis' is insulting to the thousands of people whose way of life depends on the health of our working coast," Jindal said.

He added, "We are thrilled that this has become the state's largest barrier island restoration project in history."

GREAT LAKES: White House outlines \$47M plan to battle Asian carp (12/16/2010)[http://adserver.eenews.net/www/delivery/ck.php?oaparams=2_bannerid=640_zoneid=73_source=click to_cb=1bfe0a9792_oadest=http://www.eenews.net/trial](http://adserver.eenews.net/www/delivery/ck.php?oaparams=2_bannerid=640_zoneid=73_source=click_to_cb=1bfe0a9792_oadest=http://www.eenews.net/trial)

Paul Quinlan, E&E reporter

The Obama administration released a \$47 million plan today for keeping a voracious exotic fish, the Asian carp, from passing out of the Mississippi River system into the Great Lakes.

Funding for the plan is less than two-thirds the \$75 million spent by the federal government on the effort last year, even though federal agencies have found 18 new potential pathways for the fish to migrate into the lakes.

Meanwhile, the Army Corps of Engineers said a two-year study to determine how to separate the Great Lakes from the Mississippi waterway will take five years and tried to tamp down expectations about what the study could accomplish.

"The goal is risk reduction, to reduce the risk of Asian carp from entering the Great Lakes," said Ernest Drott, the Army Corps' Great Lakes and Asian carp program manager. "We have to do what's possible. ... We're not even sure that the technology is available that would 100 percent stop any invasive species from crossing the boundary between the two basins."

Scientists, environmentalists and sportsmen have expressed concern about the exotic carp -- a heavy eater of plankton -- decimating the bottom rungs of the Great Lakes' food chain. Next year's efforts to fight the carp will include expanded waterway genetic sampling and marking to map the carp's movements, new traps and nets, and closer inspection of barge hulls, the White House Council on Environmental Quality said today.

The administration will also continue work on closing off possible routes into the lakes for the carp, including the examination of a connection during floods between the Wabash and Maumee river basins and Lake Erie, CEQ announced.

Testing will continue to weigh the effectiveness of fish tagging, sonar fish blasters and electrical fencing. A third electrical barrier was installed last year along the Chicago waterway that connects the Mississippi River system to Lake Michigan. Bait shops will also come under closer scrutiny to ensure they are not spreading carp as baitfish.

John Goss, who oversees Asian carp efforts at CEQ, said the overall plan -- 13 new projects in addition to 32 launched last year -- represent "unprecedented and proactive efforts" to keep the carp from moving north.

But environmentalists were less than thrilled.

"If we are going to rebuff the carp, the response is going to have to pick up speed and urgency," said Thom Cmar, the Natural Resources Defense Council's lead attorney for the Great Lakes. He pointed to the plan to ramp up genetic testing in the waterways as an example.

"At the end of the day," he said, "you actually have to do something to respond to what the tests are telling you."

Congress has not allocated any money specifically to fight Asian carp, so the \$47 million likely will come from what gets set aside for Great Lakes restoration.

NATURAL GAS: Texas shale drillers sued over alleged water contamination (12/16/2010)

A Dallas attorney filed two lawsuits yesterday against Barnett Shale natural gas drilling companies in Texas for contamination in private water wells.

"We believe that hundreds and more likely thousands of property owners have already had the water beneath their surface essentially ruined as a result of nearby drilling and fracking in the Barnett Shale," said Dallas attorney Windle Turley. "This is why these damage lawsuits are being filed."

In one lawsuit filed against Chesapeake Energy Corp. and Encana Oil & Gas Inc., a property owner claims that testing results show her water is contaminated with chemicals from drilling and hydraulic fracturing. In the second against Devon Energy Corp., a couple claims that their water became

contaminated with a "gray sediment" after Devon began drilling.

A spokesperson for Devon said the company does not comment on pending litigation, but Chesapeake spokesman Brian Murnahan denied that it was contaminating groundwater.

"With more than 2,000 wells drilled in the Barnett Shale formation, Chesapeake has established an outstanding record of encasing wells and protecting the region's groundwater," Murnahan said. "The press release that accompanied this lawsuit suggests that there is widespread water contamination in the Barnett Shale. That is totally false. It is irresponsible for lawyers to opportunistically prey on people's fears and misconceptions to encourage baseless lawsuits" (Jack Smith, Fort Worth *Star-Telegram*, Dec. 15). -- **AP**

WATER POLLUTION: Pa., Cabot reach settlement over methane contamination (12/16/2010)http://adserver.eenews.net/www/delivery/ck.php?oaparams=2_bannerid=958_zoneid=87_source=click_to_cb=33e42d721e_oadest=http://www.eenews.net/special_reports/kenya

Cabot Oil & Gas Corp. will pay \$4.1 million to 19 families affected by methane contamination in what Pennsylvania Department of Environmental Protection Secretary John Hanger called the strongest financial settlement the department has ever obtained for families affected by environmental damage.

In exchange for Cabot's cooperation, in which each Dimock Township, Pa., family will receive twice the value of their home, the department is halting a plan to build a 12.5-mile waterline to supply the residents with uncontaminated water. Cabot will also pay the department \$500,000 for its investigation into the contamination, according to a settlement announced yesterday.

Finally, Cabot will offer and pay for whole-house gas mitigation devices for each affected home.

"The 19 families in Dimock who have been living under very difficult conditions for far too long will receive a financial settlement that will allow them to address their own circumstances in their own way," Hanger said.

Some families, though, had been looking forward to the new waterline, which would have been paid for out of public funds. The state environment department has been investigating methane contamination in the residences' wells since January 2009 and traced it back to Cabot's operations. The company has denied that it is the source.

Cabot will be allowed to resume its drilling operations and plans to start up hydraulic fracturing again in the first quarter of 2011. Families will also be allowed to continue their lawsuit against Cabot alleging health and property damage (Laura Legere, Scranton [Pa.] *Times Tribune*, Dec. 16). -- **AP**

WATER POLLUTION: EPA accepts Ala.'s stormwater rules (12/16/2010)

U.S. EPA has accepted the Alabama Department of Environmental Management's stormwater pollution rules for small cities, ending its threat of taking over the state's permitting process.

The Alabama department can now go ahead with issuing permits under which small cities are responsible for protecting waterways from pollution from stormwater runoff and sewage.

"The department has put a tremendous amount of resources into working and communicating with EPA on this issue and we are pleased that EPA has acknowledged that effort with this approval action," said ADEM spokesman Scott Hughes.

EPA had threatened to take over permitting after criticizing a second draft of the rules. The issues over Alabama's permitting process have gone on for years before the threatened takeover, though. Builders and developers have opposed increased control by local governments, while environmentalists have long said that the state department has not been adequately curbing stormwater pollution and requiring cities to comply with the Clean Water Act.

The version approved by EPA requires local governments to have their own regulations to limit stormwater runoff, to inspect sites and to deal with violations (Thomas Spencer, *Birmingham News*, Dec. 16). -- **AP**

WATER POLLUTION: Iowa often sets low standards for safe fish -- study (12/16/2010)

Iowa is not warning people away from fish caught in its waters even though U.S. EPA and neighboring states have issued advisories against the food, according to a study by the Iowa Center for Public Affairs Journalism.

About 330,000 people have licenses to fish in Iowa and not all follow fishing advisories. Southeast Asians and Latinos are especially prone to risk since they make fish a staple of their diet, the study shows. State officials routinely issue warnings, but minorities are often unaware of them due to language gaps.

Mercury-laden fish can harm the cardiovascular and immune systems and cause neurological damage. They are especially dangerous to fetuses and can cause cognitive defects upon birth.

Advisories issued by Iowa tend to tolerate a higher level of contamination than EPA and neighboring states in fish.

Stuart Schmitz, environmental toxicologist at the Iowa Department of Public Health, said Iowa's rules are sufficient to protect people who consume fish. He said benefits of eating fish, which are a rich source of Omega-3 fatty acids and low-fat protein, outweigh the risk of potential chemicals (Gabe Gao, *Iowa Independent*, Dec. 15). -- **GV**

EMISSIONS: Exxon Mobil expands CO2 capture at Wyo. plant (12/16/2010)

Exxon Mobil Corp. has finished an \$86 million expansion of its carbon dioxide capture plant in Wyoming, an effort that will now add 100 million cubic feet of gas per day to the enhanced oil recovery market.

The expansion should reduce greenhouse gas emissions while enhancing oil production in the United States, according to Randy Broiles, vice president for the Americas division of for Exxon Mobil Production Co.


The plant is located in the Shute Creek natural gas processing facility. Natural gas streams contain carbon dioxide, and the new expansion should increase capture of the gas by 50 percent. The total capture will now equal 365 million cubic feet per day.

The gas will be sold to enhanced oil recovery projects. If some of the gas is not sold, it will be restored and eventually vented to the atmosphere, Broiles said.

The state Oil and Gas Conservation Commission had asked Exxon Mobil to undertake the project in 2008 to reduce the 180 million cubic feet of CO2 it was venting to the atmosphere per day at that time (Jeff Gearino, *Casper Star-Tribune/Billings Gazette*, Dec. 15). -- **GV**

VIRGINIA: A landfill in eastern Henrico County has been storing coal ash and other debris without proper permits, according to county officials. The landfill had acquired permits from the Virginia Department of Environmental Quality but had neglected to get permits from the county. Coal ash, which is the byproduct of coal combustion, can contain mercury, cadmium and arsenic. Without proper storage, the chemicals can leach into groundwater. The state DEQ said it had reviewed the materials to be stored before issuing the permit (Luz Lazo, *Richmond Times-Dispatch*, Dec. 16).

Cancun -- An E&E Report



A year after failing to produce a binding emissions-cutting agreement at talks in Copenhagen, Denmark, negotiators met at the table again, this time in Cancun, Mexico, and reached a modest deal. E&E tracks the negotiations and their effect on global policies. [Click here](#) to go to the report.

ClimateWire -- Fri., December 17, 2010 -- [Read the full edition](#)

1. CALIFORNIA: State regulators approve the nation's biggest cap-and-trade plan

SACRAMENTO, Calif. -- California regulators voted yesterday to approve the most comprehensive U.S. cap yet on greenhouse gases and create the biggest carbon market in the country. The California Air Resources Board voted 9-1 to approve the state's cap-and-trade plan, the keystone of its effort to reduce emissions to 1990 levels by 2020 under A.B. 32 and the nation's first economywide, market-based greenhouse gas scheme in the absence of federal action. California has the world's eighth-largest economy and the highest gross state product in the United States, at \$1.7 trillion in 2009.

2. NEGOTIATIONS: Cancun agreement preserves an escape hatch for Japan and other industrial nations

A provision ensuring that industrialized countries can wiggle out of the Kyoto Protocol after 2012 is hidden in plain view of a new climate change agreement established in Cancun, Mexico, last week. The line smothered in legalese appears to merely reference a section of the 1997 climate change treaty.

3. ENERGY EFFICIENCY: Video gamers use as much energy as San Diego -- study

4. SCIENCE: Researchers identify the last refuge of summer sea ice in the Arctic

5. COAL: Ind. backs plan for \$2 billion coal gasification plant

6. MIGRATION: Climate-related disasters increase, but data on resulting migrants remain sparse

7. GRID: FERC approves 2 transmission policies sought by renewable energy industry

8. TECHNOLOGY: 6 developing nations fund more R&D than 24 industrial nations -- study

9. AUTOS: Paris unveils electric car scheme

10. NEGOTIATIONS: Carbon market optimistic about investments after Cancun

11. ENERGY EFFICIENCY: Texas beefs up appliance rebate program before holidays

12. TRANSIT: Personal driving down in D.C.